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HCP.No.1683/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1683/2023

Maheswari S

... Petitioner

Vs.

- 1.The Secretary to Government
Home, Prohibition & Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The District Magistrate and District Collector
Tiruppur District, Tiruppur.
- 3.The Superintendent of Central Prison
Central Prison, Coimbatore
Coimbatore 641 018.
- 4.State rep.by
The Inspector of Police
C1 Kattoor Police Station
Coimbatore.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records relating



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to the petitioner's father detention under Tamil Nadu Act 14 of 1982 vide detention order dated 20.01.2023 on the file of the 2nd respondent herein vide order Cr.MP.No.06/Goonda/2023 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's father namely Senthilkumar @ Palkara Senthil, S/o.Nachimuthu, aged about 52 years before this Court and set the petitioner's father, who is presently detained at Central Prison, Coimbatore at liberty from detention.

For Petitioner	: Mr.P.H.Arvind Pandiyan Senior counsel for M/s.Cibi Vishnu Legal Aid Counsel
For Respondents	: Mr.E.Raj Thilak Additional Public Prosecutor assisted by Mr.Aravind.C

ORDER

[Order of the Court was made by S.S.SUNDAR, J]

- (1)The petitioner, daughter of the detenu herein, Senthilkumar, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 20.01.2023 slapped on her father, branding him as "Goonda" under the Tamil Nadu Act 14 of 1982.
- (2)Heard the learned Senior counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



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(3) Though several points have been raised by the learned Senior counsel for the petitioner, the detention order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority.

(4) It is seen that in paragraph No.5 of the English version of the Grounds of Detention, the Detaining Authority also observed that the detenu has not moved any bail petition in the ground case as on the date of passing the Detention Order. However, he had arrived at the subjective satisfaction that there was compelling necessity to detain the detenu under Act 14 of 1982 based on the materials placed before him. He has not recorded any statement as to the real and imminent possibility of the detenu coming out on bail in the ground case. Hence, the order of detention is vitiated on the ground of total non application of mind on the part of the Detaining Authority.

(5) The Hon'ble Supreme Court, in the case of ***Rekha Vs. State of Tamil Nadu through Secretary to Government and Another*** reported in **2011 [5] SCC 244**, has dealt with a situation where the Detention Order is passed without an application of mind. In case any of the reasons stated



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in the order of detention is non-existent or a material information is wrongly assumed, that will vitiate the Detention Order. In the instant case, the detenu has not moved any bail application in the ground case. The Detaining Authority also not recorded the factum of the real and imminent possibility of the detenu coming out on bail in the ground case. This indicates non-application of mind on the part of the Detaining Authority. When the subjective satisfaction was irrational or there was non-application of mind, the Hon'ble Supreme Court held that the order of detention is liable to be quashed. It is relevant to extract paragraphs No.10 and 11 of the said judgment of the Hon'ble Supreme Court:-

"10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present



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case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

11. In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there was no reliable material to this effect. Hence, the detention order in question cannot be sustained."

(6) In view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment and in view aforesaid reason, this Court is of the view that the detention order is liable to be quashed.

(7) Accordingly, the detention order passed by the 2nd respondent dated 20.01.2023 in Cr.MP.No.06/Goonda/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

[SSSRJ] [SMJ]
02.11.2023

AP
Internet : Yes



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To

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2. The District Magistrate and District Collector
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3. The Superintendent of Central Prison
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5. The Public Prosecutor,
High Court, Madras.



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S.S. SUNDAR, J.,
and
SUNDER MOHAN, J.,

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